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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/769,057	01/25/2001	Lodovica Balkos	4754*39	5066

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EXAMINER

HECKENBERG JR, DONALD H

ART UNIT

PAPER NUMBER

1722

DATE MAILED 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/769,057

Applicant(s)

BALKOS ET AL.

Examiner

Donald Heckenberg

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory maximum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-14 and 18-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24-30 is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, 8, 18, 21, and 31-33 is/are rejected.
- 7) ☒ Claim(s) 3, 4, 7, 9-14, 19, 20, 22 and 23 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on January 25, 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/ISB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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1. A request for continued examination (RCE) under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicants' submission filed on May 6, 2004 has been entered.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 8, 18, 21, and 31-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Glenn (U.S. Pat. No. 3,120,678; previously of record).

Glenn discloses a hamburger press. The press comprises a mould in the form of a disc (4). The disc must inherently have some weight, and thus, the mould is in the form of a disc "defining a weight." The disc has an opening (7) and an outer

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exposed generally smooth peripheral sidewall, in effect "a running surface" (see figs. 1 & 3).

Glenny further discloses a carrying component having a substantially flat, circular panel (9) and a handle (8) affixed to the flat panel. The flat panel has a generally planar surface to contact the food product to be pressed into a patty (figs. 1 & 2). The handle is sized to pass through the opening in the disc, and thereby allow the disc to move along the handle (figs. 1 & 2). The disc is movable along the handle such as to be positionable to overlie the flat panel and thereby facilitate the application of pressure to the food product (figs. 1 & 2). Note, Glenny explicitly discloses that the mould disc is rotatable about the handle- see cl. 2, ll. 35-41 describing the panel and handle as being rotatable relative to the mould disc as part of adjusting the press.

Glenny further discloses the peripheral side surface of the disc mould member (4) to extend beyond the periphery of the flat panel (fig. 1).

Claims 1, 8, and 31 recite that the peripheral side surface of the disc is such that an object (more specifically, a finger in claim 8) can be run to remove food product extending beyond the side wall during formation of a patty. This limitation is directed at the intended use of the claimed press apparatus. It

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is well settled that the intended use of an apparatus is not germane to the issue of patentability of the apparatus. If the prior art structure is capable of performing the claimed use, then it meets the claim limitation(s). In re Casey, 370 F.2d 576, 580 152 USPQ 235, 238 (CCPA 1967); In re Otto, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963); MPEP § 2115. In the instant case, the apparatus of Glenn is such that if the food material was to extend beyond the peripheral side wall, it clearly could be removed by an object such as a finger if the apparatus was used in such an operation- see figs. 1 & 3 showing the sidewall being smooth and extending all the way around the apparatus. Thus, as the apparatus disclosed by Glenn is capable of being used in the recited manner, it anticipates this claim limitation.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. The factual inquiries set forth in Graham v. John Deere Co., 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicants are advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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7. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glenny in view of Klefbeck (U.S. Pat. No. 5,658,608; previously of record).

Glenny discloses the patty moulding press as described above. Glenny does not specify the material from which the device is made. However, stainless steel is a well known material to construct things with generally. More specifically in the art of food processing devices, Klefbeck discloses an apparatus for forming food patties which is made of stainless steel (cl. 5, 11. 16-18). Thus, it would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have used stainless steel for forming the device disclosed by Glenny because this is a suitable material for the construction of a patty forming apparatus as disclosed by Klefbeck.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Glenny and Klefbeck as applied to claims 1, 5, 8, 18, 21, and 31-33 above, and further in view of Bodenstein (U.S. Pat. No. 996,449; previously of record).

Glenny and Klefbeck disclose and suggest the patty moulding press as described above. Glenny further discloses a button structure (10) to a free distal end of the handle. However,

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Glenny nor Klefbeck do not disclose a loop affixed to the distal end of the handle.

Bodenstein discloses a food processing press wherein the end of the handle piece (H) has a loop (J) to allow for gripping by fingers (p. 1, ll. 40-42).

It would have been obvious to one of ordinary skill in the art at the time of Applicants' invention to have modified the press suggested by Glenny and Klefbeck as such to provided a loop at the distal end of the handle instead of the button disclosed by Glenny because this would have allowed for gripping (and thereby, pressing) by multiple fingers as suggested by Bodenstein. It is noted that the device would then be operated in different manner than disclosed by Glenny. Specifically, the device disclosed by Glenny, as modified with a finger loop would be operated using two fingers of one hand at abutments 5a and 5b, and the fingers of a second hand in the loop to apply pressure. Such an arrangement is advantageous as it would allow for more pressure to be applied to the press.

9. Applicants' arguments with respect to claims 1, 8, and 31 have been considered but are moot in view of the new grounds of rejection.

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10. Claims 24-30 are allowed. See the reasons for indicating allowable subject matter in the previous Office Action.

11. Claims 3, 4, 7, 9-14, 19, 20, 22, and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. See the reasons for indicating allowable subject matter in the previous Office Action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Donald Heckenberg whose telephone number is (571) 272-1131. The examiner can normally be reached on Monday through Friday from 9:30 A.M. to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker, can be reached at (571) 272-1151. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <<<http://pair-direct.uspto.gov>>>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).



Donald Heckenberg
June 1, 2004